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Note on International Protection

(submitted by the High Commissioner)

SUMMARY

A description of developments in 1990 in the field of international protection of refugees is contained in the Report of the United Nations High Commissioner for Refugees to the General Assembly through the Economic and Social Council (Document E/1991/65).

The present Note analyses in general terms the current state of the international protection of refugees. An additional and central theme of this 40th anniversary Note is the need to promote and revitalize existing protection principles and, at the same time, to explore avenues for progressive development of protection law and practice.

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I. INTRODUCTION

1. The international protection of refugees, which is the primary function of the United Nations High Commissioner for Refugees (UNHCR), has benefited immeasurably from States' adherence to and implementation of the 1951 Convention Relating to the Status of Refugees. The year 1991 marks the fortieth anniversary of this instrument which, after these many years, remains the foundation of international refugee protection efforts. The basic Convention protections, including those against refoulement, arbitrary expulsion and discrimination, and those in favour of economic, social and juridical rights, are as relevant today as in 1951, both as immediate protection for individual refugees and as elements in the search for a lasting solution to their problems.

2. This year is also the fortieth anniversary of UNHCR. The 1951 Convention and the Office of the High Commissioner are, together, the basic structures that the international community put into place to ensure protection and the search for durable solutions to the problems of refugees. Four decades later, the international community has good cause to reaffirm its commitment to these structures, which stand as important testimony to enduring international cooperation to resolve refugee problems in full respect of the rights of the individuals concerned.

3. There is, however, no cause for complacency. Recent political changes of considerable moment have brought the world to the beginning of a new era. Multilateral cooperation at the global level has been improved and the role of the United Nations enhanced. However, these positive signs of a new world order for peace are emerging against the background of rising challenges. Global economic imbalances, internal conflicts and human rights violations persist. Population increases of great magnitude, in combination with severe ecological degradation, pose a major threat. These demographic, economic and ecological trends inevitably reinforce pressures towards greater international migration. States accordingly are finding themselves confronted by major new challenges in the fields of migration, asylum and refugee movements.

4. Looking forward, there is a need for States on their own and in concert, as well as for UNHCR, to apply themselves actively to the progressive development of both the law and existing international machinery so that the response capability of the international community is reinforced to meet the new complexities of today's population movements. The 1951 Convention reflects the classical approach to the protection of refugees which conceptualizes a refugee as an individual victim of persecution and assumes implicitly that the main obligations to refugees are those of asylum States. Refugees so defined are, however, only one part of modern movements of persons in search of asylum. Refugees in the broader sense, meaning persons fleeing generalized violence, external aggression, internal conflict, massive violation of human rights and other phenomena seriously disturbing public order are also a significant part. In addition, there is a large number of persons who make their way to receiving countries in both the developed and developing world, seeking economic and social betterment using asylum mechanisms particularly where alternative migration opportunities are not available to them.

5. The reality is that population movements are compelled by persecution, other forms of human rights violation and conflict, but are also caused by natural or ecological disaster, extreme poverty, or by a mix of these reasons. The protection of refugees is beset today more than in the past by major difficulties attributable in part to the complexity of population movements and a resulting lack of clarity about the protection responsibilities of States, the proper role for UNHCR and the appropriate solutions to pursue.

6. This Note takes stock of protection concerns on a global basis. It also discusses possible new directions for UNHCR's protection activities in the present world climate and in response to today's population movements involving refugees.

II. THE PROTECTION FUNCTION

7. The United Nations High Commissioner for Refugees (UNHCR) is formally mandated to protect refugees and facilitate durable solutions to their problems.[1/] These are the principle functions of the Office. Both are operational, humanitarian and non-political responsibilities. UNHCR's competence is universal; relates to a class of persons defined in general terms, rather than to any particular national grouping; and is not confined to only those States which have acceded to the relevant international refugee instruments.

8. The protection function has as its ultimate goal the achievement of durable solutions for persons of the High Commissioner's concern within a humanitarian framework and consistent with basic protection principles. It has two major components. In the first instance, there is the day-to-day responsibility of direct action to protect individuals or groups of persons having crossed national borders whose fundamental rights are in jeopardy or whose general situation requires the intervention of UNHCR to facilitate a solution. Secondly, UNHCR has a doctrinal responsibility to consolidate and expand the legal framework governing the status and rights of refugees. In essence, this function involves promoting, interpreting and developing the fundamental principles of refugee protection, with the goal of strengthening international commitments to receive persons crossing national borders and in need of international protection as well as those voluntarily repatriating, to treat them without discrimination and to help in the search for durable solutions to their problems based on humanitarian considerations and respect for basic rights. Promotional activities in this regard include dissemination of refugee-related human rights law and protection principles, active support for further accession to international instruments concerning refugees, their effective implementation, and the training of governmental and other entities involved in refugee status determination, protection and the search for durable solutions.

1/ See Statute of the Office of the United Nations High Commissioner for Refugees (annex to UN General Assembly resolution 428 (V) of 14 December 1950). Since then, through a series of resolutions, the General Assembly has extended the competence of the Office to cover also returnees, asylum-seekers and displaced persons of concern to the Office.

9. International protection activities are defined to a large extent by the specific needs of the particular groups in question. UNHCR's responsibilities are to those individuals who fall within its mandate, either under the definitional provisions of the Statute of the Office, or pursuant to international or regional refugee conventions, or by reason of the authority conferred upon the Office by subsequent General Assembly resolutions. In principle, UNHCR's concern for refugee protection covers the whole spectrum of the refugee's experience from the causes of flight to the individual's eventual durable reintegration in the country of origin or integration in a country of asylum.

10. The exercise of the protection function not only involves the use of law and diplomacy, but also possesses a physical dimension, made manifest by action to reduce the dangers of flight, promote rescue, resettle those still endangered in the receiving country, and help the victims to integrate in the country of asylum or facilitate their voluntary return. At times, a legal principle is interposed between threatened action and the refugee; at others, it is the very presence or diplomacy of a UNHCR officer. Assistance programmes are another very important mechanism, sometimes the best, through which protection can be provided or at least reinforced. In all cases, effective protection will depend on the fullest cooperation between the Office and States, as well as with other intergovernmental bodies and non-governmental organizations. On the one hand, information and views must be shared between these entities, as appropriate, for success will always require the accurate identification of situations producing flight or determining the conditions for return. On the other, UNHCR's day-to-day protection work in the field is based on the practice of trust-building and discretion. Confidentiality is a prerequisite in many cases for ascertaining the facts underlying alleged violations of, or threats to, individual human rights. It can also be an essential tool for establishing positive communication and the cooperation of all parties in achieving solutions.

III. CURRENT PROTECTION ISSUES

11. The past year has witnessed an overall improvement in the international protection of refugees in many areas. UNHCR has been particularly heartened by the continuing readiness of States generally to receive refugees and offer them protection either on a temporary or a lasting basis. Many asylum States on all continents have had to make major financial and social adjustments to host refugee groups or populations and have had to contend at the same time with adverse reactions from within their own communities. They have, nevertheless, made available considerable resources to meet the needs of the refugee communities, thus demonstrating the continuing strong humanitarian commitment of Governments at the national and international level. States have also continued to abide by their responsibilities, in a spirit of international solidarity and burden-sharing, to the overall benefit of many millions of people.

12. In the performance of its protection function, UNHCR has generally enjoyed with its State partners a close and cooperative working relationship. The number of States partners with whom UNHCR works closely has also expanded,

offering the prospect of a truly universal framework for protecting and assisting the world's refugees. Long-standing refugee situations were approached more comprehensively as plans of action adopted in 1989 at international conferences entered their implementation stage. The attainment of durable solutions through the voluntary repatriation of refugees in several parts of the world and the consequent closure of camps set up over a decade ago were major indications of progress.

13. There have, nevertheless, been protection concerns which UNHCR has had to address over the past year. In many cases these have been of an ongoing, operational nature. Some have, at the same time, gone to the heart of the principles which it is UNHCR's fundamental responsibility to safeguard. In addition, many of these concerns have been those which UNHCR, the international community of States and international organizations have had a direct and close interest in working cooperatively together to resolve. These issues can be grouped in the following manner.

A. Accession to and implementation of international instruments concerning refugees

14. Accession and effective implementation of the 1951 Convention Relating to the Status of Refugees, and other relevant international and regional instruments, notably the 1969 Organization of African Unity (OAU) Convention, are the foundation on which UNHCR bases its international protection efforts. Though over one hundred States have acceded to these instruments, there is still not sufficiently widespread adherence. Of the 108 States parties to the 1951 Convention and/or the 1967 Protocol, for example, only eight of these are in the Asia and Oceania region. In the Middle East and North Africa, there are only seven States parties to these instruments. UNHCR continues its efforts to promote broadly-based accession, but would be considerably assisted in this regard if States could more actively contribute to this effort.

15. Among the difficulties confronting accession are the prevalent misunderstandings about the implications for a State of becoming party to refugee instruments. These include the fear that accession will inevitably carry with it the prospect of a significant increase in arrivals of asylum-seekers. This, however, has not been UNHCR's experience over the years. Indeed, accession to these refugee instruments establishes a formal relationship between States and UNHCR which facilitates the preparation for, as well as the handling and resolution of, refugee situations which do arise.

16. In addition, some States have indicated a fear that they will be incurring, through accession, onerous new financial responsibilities, in particular towards UNHCR. Another common, but misplaced, fear is that the grant of asylum is incompatible with good interstate relations and that, accordingly, the 1951 Convention/1967 Protocol and the responsibilities States assume under this regime serve to create tension between countries. On the contrary, as the Convention promotes international burden-sharing and solidarity, accession serves to strengthen relations between countries of origin and countries of asylum, including in regard to easing the tensions

that movements of refugees cause. In recent years, both UNHCR and States parties have made it clear to non-party States that the more countries accede to and actively implement international refugee instruments relevant to the protection needs of the persons arriving at their borders, the closer the international community will come to an equitable sharing of the burden of uprootedness.

17. In response to these misconceptions, UNHCR has developed a more active and carefully targeted promotional campaign directed at explaining the responsibilities of States parties and dispelling the fear of mass arrivals, enormous new financial obligations, and interstate tensions. UNHCR has found it valuable in this regard to present to prospective States parties a detailed aide-mémoire explaining accession.

18. Another difficulty facing effective implementation of these instruments is the maintenance by some States of a geographic limitation on their responsibilites.[2/] The maintenance of this limitation has proved to be a complicating factor over the last twelve months in several refugee situations. In at least one country, for example, UNHCR has not been given access to persons who arrive from countries outside the geographic limitation.

B. Refugee status determination

19. The establishment in refugee-receiving countries of effective and expeditious procedures for determining the status of asylum-seekers, coupled with assured access of asylum-seekers to these procedures, is essential to guaranteeing the protection of persons who require it. It is also a vital element in a coherent international strategy for the management and resolution of refugee situations. Many States have made a serious and constructive effort to put into place effective procedures or to improve and streamline existing ones to enable proper status determination.

20. In a number of receiving countries, however, refugee status determination procedures, where they exist, do not always ensure a full and fair hearing of an individual claim. Basic guarantees of procedural and substantive due process are missing. Notable in this context, is the absence of the right to appeal in some countries. Proper interpretation facilities are often lacking. In addition, in a number of countries, examiners take the necessary status decisions based on an inadequate understanding of the applicable principles and with insufficient training in this regard. UNHCR has endeavoured to respond to some of these problems, in particular through the training of national status determination officials, advice to governments on correct procedures, and the sharing of information in the public domain regarding conditions in the country of origin. UNHCR's activities in this regard are limited by the resources made available to it for such promotion and training activities.

2/ See Article 1B of the 1951 Convention.

21. In some regions, refugee status determination is complicated by the lack of harmonization of procedures and criteria, which has resulted, inter alia, in multiple asylum requests by individual asylum-seekers endeavouring to maximize their chances of a positive decision. In addition, it has worked to concentrate the burden of large numbers of asylum claims on certain countries perceived to have more liberal procedures. States in these regions are actively and cooperatively working together and with UNHCR to redress these problems through better harmonization of procedures and criteria.

22. In a number of regions, States are confronted with arrivals of significant numbers of persons without valid refugee claims who, nevertheless, lodge asylum applications. As a result, in certain countries, important measures have been implemented to stimulate and accelerate procedures to deal with manifestly unfounded claims. This has been a useful development encouraged by UNHCR. The Office's protection efforts in this regard have been directed at ensuring that these modified procedures respect basic principles essential to refugee protection as well as guidelines for establishment of such procedures agreed at the international level.

23. In some regions, UNHCR has had to confront the difficult issue of barriers to access to procedures. These barriers have taken the form, in a number of countries, of immigration control mechanisms or practices which have been instituted with little room for discretion regarding asylum-seekers. UNHCR's concern is that measures necessary for border control, aimed at preventing the illegal entry of economic or other migrants, should, nevertheless, enable refugees to be identified and provided prompt access to national refugee status determination procedures.

24. In some countries in several regions of the world, only certain nationalities are eligible for consideration in the refugee procedures. In other countries any access to refugee status determination procedures is automatically denied to specific nationalities. These practices do not conform, in particular, with the essential protection in the 1951 Convention against discrimination on the grounds of race, religion or country of origin.

25. UNHCR has been involved in ongoing discussions with a number of countries about the proper role for the Office in national refugee status determination procedures. Clearly, when a State becomes party to the 1951 Convention/1967 Protocol, it accepts the obligation of determining to whom on its territory the Convention and/or Protocol applies. It is, therefore, the responsibility of a State to institute arrangements or procedures for refugee status determination which meet minimum accepted international safeguards. In part to ensure respect for the principle of non-refoulement, UNHCR encourages all States, regardless of Convention adherence, to institute status determination procedures. UNHCR works with States, offering its expertise as required, in order to ensure that procedures work effectively, taking into account the nature and scale of the asylum-seeker caseload, as well as the prevailing circumstances in the particular country concerned. It is essential that UNHCR be allowed access to asylum-seekers claiming the need for international protection.

26. In a number of countries, UNHCR's involvement in refugee status determination procedures has been inadequate and access to asylum-seekers has been denied. As discussed above,[3] in some instances, this denial of access has been based on the argument that the receiving country has maintained the geographic reservation in the 1951 Convention and, therefore, UNHCR's supervisory role does not apply to persons outside the scope of the particular country's responsibilities. It must be recalled in this regard that the General Assembly has charged UNHCR with providing protection to, and seeking durable solutions to the problems of, all refugees, formally recognized or not, who fall within the Office's mandate, and that this mandate is not restricted according to the international obligations assumed by a particular government.[4]

C. Basic protection: physical security, non-refoulement and asylum

27. An ongoing and extremely difficult protection problem for refugees involves threats to, or violations of, their physical security. The summary rejection of asylum-seekers at land or sea borders and their return to situations threatening their physical security have required the intervention of UNHCR on a number of occasions in many countries over the preceding year. In addition, asylum-seekers and refugees have had their freedom of movement severely curtailed, including through detention under harsh conditions in closed camps or detention centres.

28. In a number of instances, asylum-seekers have been re-exposed, by State refusal to admit them, to the real prospect of death through the sinking of unseaworthy boats. Persons rescued at sea have been unable to be disembarked. In other situations, large numbers of arrivals have been returned across neighbouring borders to countries of origin where the threat to their security remains real and serious. In one country, asylum for anyone is excluded as a matter of policy. In other States, national security is given as the reason for expulsion or refoulement of refugees, although the grounds of this argument have been left unstated and have not been subject to any judicial review.

29. Refugees in some camps have been the object of armed attacks or forcible recruitment into the regular and irregular armed forces of several countries. Security problems in camps have not been confined to the refugee population alone. The safety of UNHCR and other international staff has been seriously at risk in a number of cases, in part because of the frustrating and alienating effect of camp conditions on the behaviour of camp residents. The security situation in one camp deteriorated to the point where UNHCR had temporarily to withdraw completely from it. UNHCR staff have, accordingly, had to receive training on how to deal with violent attacks on their person, while field offices have formulated security plans for camps.

3/ See supra paragraph 17.

4/ See Statute of the Office, paras. 1 and 9.

30. A number of refugees have been prohibited from returning to the countries where they have resided for years. Others cannot get their personal documentation renewed and are banned from seeking asylum in other countries. Still others face the problems of statelessness as their nationality is not recognized under the laws of any country.

31. Of particular concern to UNHCR have been the pre-conditions several States attach to possibilities for obtaining asylum, even on a temporary basis. In some instances, the prospect of a durable solution (usually resettlement) outside the country of asylum has been set as a pre-requisite even for initial entry. In other cases, States have required UNHCR to assume the full financial and organizational burden of hosting asylum-seekers and their removal within a particularly short time-frame before entry has been allowed. There have also been instances where a refugee claim is rejected based on the applicant's alleged ability to have sought asylum in a country through which (s)he transited en route to the receiving country.

32. In other States, the conditions of asylum enjoyed by refugees outside camps or centres have not been compatible with minimum standards foreseen in international instruments. In this regard, for example, the right to work has not always been granted in a number of countries, while access to national administrative facilities, for example, to register births or deaths, has been denied. The issue and duration of travel documents for refugees has remained a perennial problem in several countries.

33. UNHCR has valued the readiness of a number of States to offer a protected status to certain groups or individuals who are determined by national authorities not to be refugees but who are, nevertheless, recognized as being in need of some protection. The Office's main interest in such situations has been to seek to clarify or, as appropriate, broaden the scope of the basic rights enjoyed by these persons.

34. The above are all issues which are not new for UNHCR. The Office has, in fact, been required to deal with them on a regular basis in countries throughout the world. UNHCR's response on behalf of the affected individuals has been complicated in a number of countries by a growing antipathy on the part of governments and their public to hosting refugee populations and receiving asylum-seekers. UNHCR has had to intensify its public information activities, its dialogue with asylum countries, as well as its promotion and dissemination activities, advisory services and training programmes. It has been clear, however, that the situations and circumstances generating these problems require, in addition, new approaches to fulfilling protection responsibilities, which are discussed in general terms in later sections of this note.

D. Solutions: voluntary repatriation, local settlement and resettlement

35. UNHCR has continued to promote the voluntary repatriation of refugees as the preferred solution where it is feasible. The efforts over the past year of countries of origin and countries of asylum to facilitate voluntary repatriation -- sometimes closely in concert with the refugees themselves or

concerned neighbouring countries -- through tripartite and quadripartite commissions, are particularly to be commended.

36. In several countries, nevertheless, problems in verifying the voluntary nature of the decision to return have persisted. This is particularly the case where resistance forces have exercised significant control or influence over the daily lives of the refugees, or where the conditions of asylum are so severe as to border on coercion to repatriate. In addition, UNHCR has continued to experience problems in obtaining access to returnees in a number of countries. This has made it extremely difficult to monitor guarantees of safety on return. In fact, in certain countries, returnees are known to experience harassment, arbitrary detention, disappearance and, on occasion, be the object of direct aggression by the military where they live in a repatriate community. As a result, UNHCR's monitoring role in certain countries where there are returnee populations has had to continue for a lengthy period and has complicated the Office's relations with these States as far as other activities therein are concerned.

37. In some countries, returnees have been internally displaced by the prevailing security situation in their place of origin or chosen destination. In certain countries, UNHCR has been called upon to respond to the protection concerns of non-returnee internally displaced persons, as well as returnees, where the protection concerns of the two groups have become increasingly indistinguishable. As for other traditional solutions, local integration has become less of an option for refugees. Similarly, UNHCR has experienced considerable difficulty, in a number of cases, in finding resettlement possibilities, even for persons for whom resettlement is urgently required for protection reasons. A complicating factor has been the requirement, by some resettlement countries which make places available, that persons already recognized as refugees must satisfy normal, non-refugee-related immigration criteria, also in situations of immediate protection need.

38. Fundamental civil, political and social changes in certain countries have resulted in an opening up and democratization process, which may be interpreted as a fundamental change in circumstances from a refugee-status point of view. This has resulted in the termination by countries of asylum of the refugee status of persons from one or more of these countries. In a number of cases, the decision may have been appropriate. In some others, the decision to terminate status may have been taken before sufficient time had elapsed since the fundamental changes occurred for the situation in the country of origin to have been considered stable.

IV. NEW DIRECTIONS FOR PROTECTION

39. As is clear from the foregoing, despite very real and positive developments, protection problems remain many and serious and are globally spread. Certain of the problems are ongoing and engage UNHCR's normal protection responsibilities. The basic approaches by the Office to such problems have been dialogue between UNHCR and the concerned State, direct assistance to individuals and promotion of durable solutions which guarantee the necessary protection. It is, however, increasingly clear that the nature

and scale of population movements today, and the protection concerns they generate, severely tax existing response capabilities of both States and concerned institutions, including UNHCR.

40. States have begun to adjust their asylum policies, in part to ensure a better sharing of responsibilities. For its part, UNHCR is constantly evaluating its own approaches and doctrine in light of the requirements of both ongoing and new refugee situations. The following paragraphs focus on new protection emphases for UNHCR and areas where the Office will concentrate its activities.

41. It is clear that what is required, for population movements involving asylum-seekers, is a global, solutions-oriented, approach by the international community. This approach needs to integrate and properly balance humanitarian and human rights concerns with development, foreign policy and immigration control considerations. The principles of refugee law, including non-refoulement, reflect the fundamental distinction between refugees and immigrants. Any new policy formulation must be consistent with the principles particular to, and essential for, the protection of the refugee. At the same time, there is a need to move from the traditional view of the refugee problem as one of the receiving country's responsibility only. There should be new focus on the nature of States' responsibilities, including those of countries of origin. New approaches must address causes both in terms of their elimination and prevention. Furthermore, options to promote return, including offering protection inside countries of origin, should be actively explored. Finally, any approach must be based on a full appreciation of all the factors impelling people to leave. These include persecution and conflict, but there are other causes which the international community needs to address, such as the absence of minimum living standards or meaningful economic prospects, as well as environmental degradation.

42. Based on these parameters for action by the international community as a whole, and always appreciating the need for individual tailoring of responses, certain activities can now be identified for UNHCR, in its capacity as catalyst or actor, whichever is appropriate. The key to the future lies in a combination of preventive action by the international community, acceptance of State responsibility, burden-sharing mechanisms, public information strategies and strengthening of the existing international response machinery.

A. Prevention

43. To begin with, there is a need for preventive activity. Prevention in this context means the elimination of causes of departure -- so that people will not feel compelled to leave -- rather than the erection of barriers which leave causes intact, but make departure impossible. Prevention also means the early containment of a situation of exodus so that threats to the security and well-being of the persons concerned are not aggravated and the situation remains manageable from both the humanitarian and political standpoint.

44. Early-warning of developing emergencies, in order to facilitate their timely mediation, is fundamental. Both at the national level and among international organizations there is a need for early-warning systems which

allow for detection of problems and incorporate appropriate follow-up mechanisms. The UN system is currently exploring a possible UN early-warning mechanism, through the medium of an inter-agency working group of which UNHCR is an active member. Through its work on the ground with asylum-seekers and refugees on one side of the border, and repatriates on the other, UNHCR has the potential to contribute significantly, on the basis of the Office's already existing activities, to the work of any mechanism developed.

45. Prevention also requires more effective utilization of human-rights protection and development mechanisms. Strengthened observance of civil and political rights, but equally of economic, social and cultural rights, is fundamental in dealing with the root causes of refugee flows. Development assistance agencies in national administrations, as well as international development institutions, should be encouraged to orient their aid policies so as to promote positive human rights situations and target socio-economic imbalances which cause population movements. Countries of origin must ensure the inclusion of the needs of returnees and/or internally displaced persons in their national development plans. For its part, UNHCR continues to strengthen its ties with intergovernmental human rights machinery -- be it expert, political or operational -- as well as with non-governmental human rights organizations working in the field. Contributing formally or informally to their consideration of refugee-related human rights issues, linking into their monitoring mechanisms, participating in promotional activities (including through distribution of basic human rights material), cooperating with their advisory services and generally drawing on their expertise for UNHCR promotion and protection work, are among the activities of the Office.

46. Traditionally, UNHCR has played a role in countries of origin in regard to voluntary repatriation and durable reintegration activities. Particularly in recent years, the Office's work with repatriates has educated it regarding the substantial commonality of the protection problems faced by many internally displaced persons and repatriates. Moreover, UNHCR has seen many refugees return home to situations of internal displacement. This experience has further convinced the Office that adequate protection of internally displaced persons in particular is a key factor in the prevention of refugee flows and in ensuring the durability of repatriates' reintegration in their country of origin.

47. A particular challenge for UNHCR in this regard, is how to devise methods to meet the security and protection concerns of individuals prior to departure so as to obviate the need for flight. Through its experience in recent emergencies where UNHCR was called upon to play a role, the Office is aware that protection of persons inside their country of origin is feasible, where accompanied by necessary guarantees fully consonant with international human rights standards. In-country protection, e.g. through the establishment of internationally guaranteed safety zones, however, needs to be weighed against the rights of individuals to leave their own country, to seek and enjoy asylum or return on a voluntary basis, and not be compelled to remain in a territory where life, liberty or physical integrity is threatened. There are, as well, the basic principles of State sovereignty and the inviolability of territorial integrity to be reconciled with protection inside a country of origin. In addition, there is the issue for UNHCR of present mandate

limitations. The extent to which activity inside a country of origin -- but outside the voluntary repatriation context -- should or can be considered a proper responsibility of the Office and one which is consistent with UNHCR's statutory obligations to persons of its concern needs careful reflection. This is particularly the case where UNHCR is called upon to play a role in relation to nationals who have never been considered refugees. UNHCR must remain open to new thinking and flexible on how it can best perform its responsibilities. At the same time, the content of these responsibilities, and the limits to compromise imposed by the Office's obligation to protect, must be clearly understood. This will be an ever-more delicate balance for the Office to strike in the future.

B. Acceptance of State responsibility

48. A State's fulfilment of its responsibilities on its own territory is consistent with a solutions-oriented approach to international protection. Such an approach also requires UNHCR's protection function to embrace effective measures for facilitating the elimination of root causes, as well as to ensure, as appropriate, the voluntary repatriation of refugees and their durable reintegration. Proper performance of the protection function will therefore benefit from further development and acceptance of the concept of State responsibility.

49. Responsibility in relation to causes of flight/displacement of refugees and other groups has both a preventive and remedial aspect. It is a responsibility which devolves on countries of origin, but also on the international community of States, by virtue of fundamental State obligations to safeguard and protect human life and dignity and to guarantee citizens' rights, as well as those obligations inherent in membership of the international community. The challenge today is to give greater practical content to these obligations as far as uprooting of persons is concerned, require States to eliminate violations of human rights in their territory, cooperate internationally to reduce push factors, and share burdens in order to facilitate acceptance of responsibilities by both countries of origin and countries of (first) asylum. Internationally orchestrated pressure, interstate dialogue and development-aid policies are among the mechanisms open to States. UNHCR's tasks in this regard include the stimulation of open discussion and better understanding of the concept of State responsibility as it relates to uprooted persons of concern to the Office. In addition, through assistance programmes and careful exercise of its protection mandate, UNHCR can and does encourage acceptance of responsibilities by States. It can also work directly with countries of origin and countries of asylum, within the framework of agreed regional arrangements such as the International Conference on Central American Refugees (CIREFCA) and the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA), to ensure that, once responsibility is accepted by a State, this is translated into legal and practical guarantees. In this regard, the agreement of States to accept back their citizens and restore their rights through amnesties can be -- and often is -- negotiated with the assistance of UNHCR. These are several areas where there is scope for even more concerted UNHCR action in favour of protection of persons of concern to the Office and the search for durable solutions to their problems. The Office will be examining these possibilities over the coming months.

C. Burden-sharing mechanisms

50. State responsibility is closely linked to burden-sharing. The Executive Committee, at its thirty-ninth session in 1988, reaffirmed "that refugee problems are the concern of the international community and their resolution is dependent on the will and capacity of States to respond in concert and wholeheartedly in a spirit of true humanitarianism and international cooperation".[5/] The Executive Committee saw international solidarity as contributing to the fulfilment of States' responsibilities to cooperate with UNHCR in its protection activities, as well as to assist other States to respect humanitarian principles, protect refugees and adopt a humane approach to the grant of asylum. For the future, there is a need to go beyond positive affirmations in this regard and develop mechanisms or arrangements which will allow for fair and effective sharing of responsibilities. Arrangements already in existence include European regional conventions on the assignment of responsibilities for examining asylum requests. There are also Executive Committee guidelines bearing on this issue, notably the 1989 conclusion on Irregular Movements.[6/] Finally, the concepts of safe country and unsafe country are being used in the framework of some refugee status determination or asylum proceedings to identify the countries which can reasonably be asked to exercise responsibilities for the individuals concerned.

51. Further innovative thinking on additional burden-sharing mechanisms and clarification of the parameters of existing ones is now needed. Here there is an important role for UNHCR. The Office must work with States to ensure that the mechanisms devised distribute the responsibilities efficaciously and appropriately, without being to the detriment of refugee protection, and can offer the possibility of effective and lasting solutions. To this end, for example, the Sub-Committee of the Whole on International Protection has been asked to examine the safe-country concept at its present session. UNHCR is also consulting with concerned Governments on the most appropriate role for UNHCR in implementation of regional conventions as regards the assignment of responsibilities to examine asylum requests. How the Office might work to achieve further harmonization and acceleration of asylum procedures, of refugee status determination and of interpretation of the 1951 Convention, is being actively considered.

D. Public information strategies

52. Persons leave their countries ill-informed about refugee status and the general conditions and prospects for the grant of asylum. The arrival of large numbers of asylum-seekers without valid claims increasingly prejudices public opinion in receiving countries. Governments and UNHCR have a clear responsibility to educate public opinion by making public information

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5/ Executive Committee Conclusion no. 52 (XXXIX) of 1988 concerning "International Solidarity and Refugee Protection".

6/ Conclusion no. 58 (XL).

activities, including information sharing, an integral part of future strategies to address migratory flows which seek to use asylum channels. Such strategies should, inter alia, aim at ensuring, including in countries of origin, the wide availability of accurate information about refugee status determination procedures, the grant of asylum, and immigration policies in receiving countries and, not least, what UNHCR is and can or cannot do.

53. At the same time, informed decisions in refugee status determination procedures and effective protection of persons in need depend on clear, accurate and current information regarding the situations in countries of origin. The dissemination of country of origin information already available in the public domain is an urgent need. UNHCR's role as collector and a potential provider of such information is currently under active consideration. UNHCR has already been working on an ad hoc basis with States to expand its own information base and that of States in this regard.

E. Strengthening of existing international response machinery

54. The debate in intergovernmental bodies, primarily in the Economic and Social Council (ECOSOC), demonstrated the compelling need for an effective emergency-response mechanism which would enable the international community to respond immediately and decisively to humanitarian emergencies involving mass movements of population, whether internal or external, including refugees. UNHCR is an active participant in these discussions, and has emphasized the necessity for capacity-building and for improved inter-agency cooperation.

V. FURTHER DEVELOPMENT OF REFUGEE LAW

55. As protection activities are performed within a framework of legal rules or principles, it is fundamental to the effective protection of individuals that the legal framework is comprehensive and does not remain static, but responds to the new challenges.

56. As was recognized at the fourteenth Round Table on Current Problems of International Humanitarian Law, held at the International Institute of Humanitarian Law in San Remo, Italy, in 1989, even where situations are not specifically covered by international refugee conventions, refugees, asylum-seekers and displaced persons are, nevertheless, protected by the general principles of international law, the humanitarian practices of international organizations, the principle of humanity, and guarantees of fundamental human rights. Within the framework of this existing body of international law, three sets of principles have tended to develop separately, although in parallel, where they could perhaps have been linked more closely at an earlier stage. These are the law of refugee protection, human rights law generally and humanitarian law. Together, these three domains of law -- which, in reality, are closely interrelated and often overlap -- should ideally permit an individual to assert a claim, not only against his or her own country or, in certain situations, another country, but on the international community as whole -- a claim to its direct involvement on humanitarian grounds. In other words, where Governments fail to recognize

individual claims, or where there is no effective Government to which an individual in the first instance might turn, there is a pressing need for that person to be able to assert a claim more broadly. The international community seems already to be moving in this direction as a result of recent events and there might be value in examining how the legal foundations of this development could be strengthened.

57. The 1951 Convention is one of the pivotal legal instruments of refugee protection. It has attracted an impressive adherence and is recognized as being of close and continuing relevance to the protection of refugees today. There are some gaps or uncertainties, however, in the protection it can or should offer to persons seeking to rely on it. A major task for UNHCR in the coming period will be to develop strategies both to broaden adherence to the 1951 Convention and to strengthen its protections, as well as to resolve differences of interpretation through whatever media are appropriate, including Executive Committee conclusions, UN resolutions or declarations and, perhaps, additional legal instruments. The possibilities offered by resort to the advisory jurisdiction of the International Court of Justice might also be actively explored.

VI. CONCLUSION

58. The central theme of this fortieth anniversary Note is the need to promote and revitalize existing protection principles and, at the same time, to explore avenues for progressive development of protection law and practice. Within a framework of basic values and principles, this process of development must obviously follow the dictates of common sense. The protection of the individual in difficult and changing circumstances will ultimately depend for its efficacy on an approach which relates, in a sensible and practical way, general values and principles to actual circumstances.

59. A new multilateral order for cooperation on refugee, migration and humanitarian affairs is emerging. This will have important implications, not least for UNHCR. Clearly, a number of the challenges are beyond the response capability, resources, experience and mandate of the Office. There will, however, be important areas where UNHCR's contribution can be of major significance. The time has perhaps arrived for careful re-evaluation by the international community, in concert with UNHCR, of the mandate and role of the Office in this new, multilateral order.